

Task Force on Commerce, Insurance and Economic Development Tentative Meeting Agenda

2016 States and Nation Policy Summit | Washington, DC
Thursday, December 1, 2016
2:30 - 5:30 PM

2:30 PM

Call to Order

Welcome and Introductions

New Member Introductions

Subcommittee Reports

A Report from the Labor and Business Regulation Subcommittee

A Report from the Financial Services Subcommittee

A Report from the Transportation Subcommittee

A Report from the Joint Prosperity States Working Group

Presentations and Model Policy

3:00 PM

Presentation: An update on Federal Regulations in a Trump Administration

3:15 PM

Legislative Leaders: States Take the Lead on Protecting Liberty

3:45 PM

Presentation: Autonomous Vehicles, Challenges and Opportunities

4:05 PM

Presentation: State Strategies on Occupational Licensing Reform

4:20 PM

Model Policy Subject to Five Year Review

Resolution on the Misapplication of Employee Classification Laws

Resolution to Restore Transportation to the States

4:30 PM

State Regulation of Commercial and Recreational Drone Operations

4:40 PM

Model Policy Consideration: An Act to Establish a Cap on Government Red Tape

4:50 PM

Commerce, Insurance, and Economic Development Task Force Member 2017 Update

5:20 PM

For the Good of the Order

5:30 PM

Adjournment

Commerce, Insurance and Economic Development Task Force Speaker Biographies

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Karen Czarnecki

Senior Director of Outreach

The Mercatus Center at George Mason University

Karen Czarnecki is the Senior Director of Outreach for the Mercatus Center at George Mason University. Karen was previously the director of education at the Law & Economics Center (LEC) at George Mason University School of Law. Prior to the LEC, Karen worked as Chief of Staff for Congressman Mike Kelly, a communications advisor, and served in the U.S. Department of Labor as Director, Office of the 21st Century Workforce; Deputy Assistant Secretary, Intergovernmental Affairs; and Acting Assistant Secretary, ODEP. Before that, Karen worked with the American Legislative Exchange Council, the Heritage Foundation, and the White House. Karen is an adjunct professor at George Mason, where she teaches a public policy seminar as part of the Institute on Comparative Political and Economic Systems for the Fund for American Studies. She is also a member and former co-chair, Board of Regents for the Fund for American Studies. Karen earned a BA and JD from the Catholic University of America.

Alfredo Ortiz

President and Chief Executive Officer

Job Creators Network

Alfredo Ortiz is the president and CEO of the Job Creators Network, where he has led the defense of small businesses from the onslaught of bad government policies. Alfredo has testified before legislative committees about the impact of bad government policy on job creation, and speaks frequently to business organizations across the nation about the need for job creators to seize responsibility for defending free enterprise. He has been widely published in major media outlets, including CNBC, The Hill, and The Orange County Register, and is a frequent guest on radio talk shows, including the Hugh Hewitt, Mike Gallagher, and Dennis Prager Show. He is also a board member for the Georgia Chamber of Commerce and an advisory board member for Littler's Workplace Policy Institute. Prior to joining JCN, Alfredo was Vice President of CSM Bakery Products' Food Service Division. Alfredo was also a consultant at Boston Consulting Group in their Washington office, and has worked in marketing, new product development and corporate strategy for Georgia Pacific, Kraft and others. Alfredo received his MBA at the University of Michigan and graduated from Pomona College with a bachelor's degree in Economics.

James Sherk

Research Fellow, Labor Economics

The Heritage Foundation

As research fellow in labor economics at The Heritage Foundation, James Sherk researches ways to promote competition and mobility in the workforce rather than erect barriers that prevent workers from getting ahead. Sherk, who joined Heritage in 2006, frequently testifies before committees of

Congress on labor policy issues. He has testified before the House Education and Workforce Committee, Oversight and Government Reform Committee, the Joint Economic Committee, and the Senate Health Education Labor and Pensions Committee. Sherk has also testified before state legislatures across the country, including the Wisconsin legislature as it debated passing right-to-work. Sherk's commentary and analysis have appeared in publications such as the Wall Street Journal, the Washington Post, USA Today, Washington Times, Business Week and Roll Call. CNN, Fox News Channel, CNBC and PBS are among TV news outlets to feature his analysis of pressing labor issues. Sherk completed graduate studies at the University of Rochester, where he received a master of arts in economics with a concentration in econometrics and labor economics. He also holds a bachelor's degree in economics and mathematics from Hillsdale College in Hillsdale, Mich. Sherk resides with his beloved wife in northern Virginia.

Delegate Michael Webert **Virginia Legislature**

Delegate Michael Webert has represented Virginia's 18th District in the Virginia House of Delegates since 2012. Webert is a conservative who strives to both protect our traditional values as well as the quality of life in [Virginia's] 18th District. He has been a leader in Richmond, as a Co-Founder of the Business Development Caucus he has led the way in providing a voice for small business. He has strived to work for the people of the 18th and protect the quality of life and beautiful scenery. As a farmer he has led the way in conservation and worked to protect our rural heritage. Mike is a family man whose sons and wife and other families are the reason he serves in the House of Delegates.

Representative Ron Hood **Ohio Legislature**

State Representative Ron Hood is serving his 6th term in the Ohio House. Hood represents the 78th House District, which encompasses Hocking and Morgan counties, as well as portions of Athens, Fairfield, Muskingum and Pickaway counties. Representative Hood is member of the Commerce and Labor Committee, Community and Family Advancement Committee, Rules and Reference Committee, and State Government Committee. He has received numerous awards during his time in the House, including the Outstanding Conservative Freshman Legislator, the Frank Lausche Young Conservative Award, National Right to Work Legislator of the Year, National Association for Gun Rights Legislator of the Year, Faith to Action Braveheart Award and four Watchdog of the Treasury Awards. Representative Hood resides in Ashville with his wife, Michal. They have five children: Ellah, Edward, Judah, Quinne and Wesley.

Steve Boyd **Co-Founder and Vice President of External Affairs** **Peloton Technology**

As an entrepreneur, strategist, business development and campaign leader, Boyd has developed and run enterprises, programs and campaigns focused on energy, transportation, economic development, and educational opportunity for over 20 years. Since 2006 he has focused his work on clean tech and smart infrastructure -- enhancing efficiency, safety and analytics in transportation, freight movement and the built environment. Peloton Technology is a Silicon Valley based vehicle safety and automation technology company developing solutions to improve safety, efficiency and the driver experience in

freight trucking. To deliver new levels of safety and efficiency for trucking fleets, our systems bring together best-in-class active safety systems, vehicle to vehicle (V2V) communications, over-the-horizon information for drivers, and cloud-based fleet management.

Boyd is also Founder and President of New City Energy. New City Energy is a consulting practice that provides solutions in the energy and sustainability arena to government, business and nonprofit clients. Bringing together innovative teaming partners and technologies specific to client needs, the firm provides a range of services: program design/management, project development, finance strategy, efficiency and renewable energy technology integration, transportation efficiency strategy, energy procurement, marketing and communications, and fundraising. Among other roles in the entrepreneurial and clean tech sector, Boyd is a founding board member of the Clean Economy Network, a member of Nectito, a founding member of HUB DC, and on the Advisory Boards of BUILD Metro DC and the DC Social Innovation Project.

Ian Adams
Senior Fellow
R Street Institute

In addition to his role as senior fellow at the R Street Institute, Ian is an insurance and public policy associate with the firm Orrick, Herrington & Sutcliffe in Sacramento, California, where he advises clients on matters at the intersection of law, business and public policy. His research and writing has focused on state-based property and casualty insurance regulation as well as disaster financing and the gig economy. He is the author of a recent study on the impact of California's Prop 103. Ian's work has appeared in publications like *The New York Times*, *San Jose Mercury-News*, *Sacramento Bee*, *The Oregonian* and RealClearPolicy, among other outlets. Previously, Ian was a Jesse M. Unruh Assembly Fellow with the office of state Assemblyman Curt Hagman, R-Chino Hills, while Hagman served as vice chairman of the California Assembly Insurance Committee and was a legal extern with the office of state Rep. Bruce Hanna, R-Roseburg, who was then co-speaker of the Oregon House of Representatives. Ian also worked as a law clerk for California's largest insurance trade association. Ian is a 2009 graduate of Seattle University, with bachelor's degrees in history and philosophy and received his law degree from the University of Oregon in 2013. He is a member of the Illinois bar.

Jim Manley
Senior Attorney
Goldwater Institute

Jim Manley is a senior attorney at the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation. Before joining the Goldwater Institute, Jim served six years as a staff attorney at Mountain States Legal Foundation. In his first case after graduating from law school, he secured a victory at the Colorado Supreme Court protecting the right to self-defense on college campuses. His cases defending free speech, the right to keep and bear arms, taxpayer rights, and property rights have set important precedents in state and federal courts. A native of Michigan, he graduated from Arizona State University, with a double major in Political Science and Journalism. He earned his J.D. from the University of Colorado Law School, where he served as an Associate Editor of the Law Review and President of the Federalist Society. Before attending law school, Jim was a professional ski instructor in Telluride, Colorado, and a Reagan Fellow at the Goldwater Institute.

Jonathon Hauenschild

**Director, Communications and Technology Task Force
American Legislative Exchange Council**

Jonathon Paul Hauenschild, J.D. is the director for the ALEC Task Force on Communications and Technology. Prior to joining ALEC, Mr. Hauenschild owned and operated Franklin Adams & Company, LLC, a legal support company dedicated to helping attorneys craft quality legal arguments and briefs. Mr. Hauenschild's assistance has led to at least one client receiving a favorable, published opinion from the U.S. Court of Appeals for the Ninth Circuit, in *Gilstrap v. United Airlines*. Mr. Hauenschild was also named as co-counsel in a nationwide class-action suit representing employees in a dispute as to whether their employer properly calculated commission wages. The class action successfully settled, with the employer properly calculating the wages and compensating the employees for unpaid back-wages.

Since passing the California bar in 2007, Mr. Hauenschild has represented a diverse portfolio of interests. For several years, Mr. Hauenschild worked as a Contract Attorney with the Pittsburgh, Pennsylvania based firm of Eckert, Seamans, Cherin & Mellot. While there, Mr. Hauenschild focused on pharmaceutical product liability defense, helping senior attorneys at Eckert Seamans respond to discovery requests, prepare for depositions and prepare for trial. Mr. Hauenschild has his Bachelor of Arts in History from Thomas Edison State College and is a 2007 graduate, magna cum laude, of the Oak Brook College of Law. He is licensed to practice law in California, and is admitted to various federal district courts, the U.S. Court of Appeals for the Ninth Circuit and the U. S. Supreme Court. When not analyzing communications, technology and health policy, you may find Mr. Hauenschild cycling, skiing or playing Ultimate Frisbee.

Resolution on the Misapplication of Employee Classification Laws

Summary

This resolution recognizes that business format franchising is a major contributor to the United States economy. The resolution also recognizes that franchising is a contractual business relationship, not akin to an employment relationship.

Model Resolution

WHEREAS, franchising contributes \$1.2 trillion to the United States economy through 820,000 franchise businesses; and

WHEREAS, franchise businesses employ over 9 million workers; and

WHEREAS, franchising has been a major source of economic expansion in the United States, particularly in the retail trade and services sectors, providing entrepreneurs with a proven route to business ownership; and

WHEREAS, business and franchise agreements are contracts that govern the duties and obligations of the parties to these agreements; and

WHEREAS, Section 10 of the U.S. Constitution and most state constitutions specifically prohibit impairment of contracts that are freely and openly entered into by the parties; and

WHEREAS, the area of contract law is a well established and settled area of law with sound guiding principles outlined in the uniform commercial code; and

WHEREAS, legislation or regulations which would improperly classify franchisees as “employees” is a misinterpretation of labor and contract policy and deprives franchise investors of valuable economic opportunities; and

THEREFORE, BE IT RESOLVED, that [insert state here] opposes enactment of laws that interfere with business and franchise agreements freely and openly entered into by parties.

BE IT FURTHER RESOLVED, that [insert state here] opposes enactment of laws and regulations that have the effect of classifying franchisees as “employees” of the franchisor.

Adopted by the Commerce, Insurance and Economic Development Task Force at the States and Nation Policy Summit, December 1, 2011. Approved by the Legislative Board January 2012.

Resolution to Restore Transportation to the States

Summary

This Resolution empowers the state of [insert state] to manage gas tax dollars without federal government interference.

Model Resolution

WHEREAS, the United States Department of Transportation was established by an act of Congress on October 15, 1966, and the department's first official day of operation was April 1, 1967; and

WHEREAS, the mission of the department is to "Serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future."; and

WHEREAS, the main mission of the department has largely been fulfilled by the completion of the federal interstate highway system; and

WHEREAS, state and local governments are faced with difficult decisions regarding local transportation needs on a continuing and ever-increasing basis; and

WHEREAS, the federal motor fuel taxes charged to the citizens of [insert state] are needlessly sent to the federal government before being returned to the state government; and

WHEREAS, federal restrictions, mandates and spending requirements prevent the citizens of [insert state] from setting their own transportation priorities; and

THEREFORE, BE IT JOINTLY RESOLVED by the Assembly and Senate of the state of [insert state] that this body urges making funds collected under the federal gas tax immediately available to individual states to fund their transportation needs; and

BE IT FURTHER RESOLVED that this body urges federal government to cease the collection of motor fuel taxes in [insert state] so that the state can collect and distribute the taxes without delay caused by federal collection and disbursement; and

BE IT FURTHER RESOLVED that a copy of this resolution be delivered to the Commissioner of the United States Department of Transportation and to the congressional delegation of the state of [insert state.]

Adopted by the Commerce, Insurance and Economic Development Task Force at the States and Nation Policy Summit, December 1, 2011. Approved by the ALEC Legislative Board January 2012.

Model Policy: An Act to Establish a Cap on Government Red Tape

Purpose: The purpose of this policy is to cap the total number of regulatory requirements enacted by this state. As new regulatory requirements become necessary, they are added with ease while old or duplicative ones remain on the books. This policy ensures that for every new regulatory requirement enacted, two old regulatory requirements are sunset until the Red Tape Reduction Target is met, at which point the act will allow for every new regulatory requirement enacted, one old regulatory requirement will be sunset, thus maintaining zero net new regulatory requirements.

Section 1. {Short Title} This act may be cited as the Government Red Tape Cap Act of [Year].

Section 2. {Definitions}

A. Scope. For the purposes of this article, the words defined in this section have the meaning given.

B. Regulatory Requirement. "Regulatory Requirement" means any action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business, or pursue legislated privileges. The term includes any amendment or repeal of prior "Regulatory Requirements" but does not include the following:

1. Statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public;
2. Declaratory rulings;
3. Intra-agency or inter-agency memoranda;

C. Agency. "Agency" means each state board, commission, institution, department, other office in the executive branch of state government that is created by the constitution or statute of [insert state], or officer authorized by law to make regulations (including their associated "regulatory requirements") or to determine contested cases;

D. Proposed Regulation. "Proposed Regulation" means a proposal by an agency or legislation for a new regulation or for a change in, addition to, or repeal of an existing regulation;

E. Cap. "Cap" means a limit on the total number such as to create and sustain a zero net increase after a specific date;

F. Plain Language. "Plain Language" means written without acronyms, jargon, or legal phrasing.

Section 3. {Cap on Regulatory Requirements}

A. The State of [insert state] hereby establishes a cap on the total number of regulatory requirements, ensuring a zero net increase in regulatory requirements beginning six months after the enactment of this act as enumerated in Section 10 of this act;

B. All actions relating to the enforcement of Section 3 (A) of this act shall be conducted by the Office of Regulatory Management as enumerated in Section 4 of this act;

C. The measurement of current regulatory requirements shall be conducted under the supervision of the Office of Regulatory Management in accordance with Section 4 (B) (1) of this act;

D. To ensure compliance with Section 3 (A) of this act, all proposed regulation after the enactment of this act enumerated in Section 10 of this act must be evaluated under the supervision of the Office of Regulatory Management in accordance with Section 4 (D) of this act;

E. Red Tape Reduction Target will be a reduction of 35% of the existing regulatory requirements. Once this target is met, Section 7 (A) will take effect.

Section 4. {Office of Regulatory Management}

A. To enforce and manage the cap on regulatory requirements outlined in Section 3 (A) of this act, the Governor will create an Office of Regulatory Management. The Office of Regulatory Management will include the following:

1. A Chief Regulatory Management Officer to manage the Office of Regulatory Management;
 - a. No later than three months after the enactment of this legislation as enumerated in Section 10 of this act, the Governor shall appoint an individual as Chief Regulatory Management Officer.
 - b. The Chief Regulatory Management Officer may be removed and replaced upon a two-thirds majority vote in both houses of the legislature;
2. Appropriate staff to carry out the duties of the Office of Regulatory Management as outlined Section 4 (B) of this act;

B. Duties

1. The Office of Regulatory Management will supervise the establishment of a baseline measurement of regulatory requirements currently in place six months after the enactment of this act;
 - a. Each agency will conduct an internal review of all regulatory requirements currently in place six months after the enactment of this act under the supervision of the Office of Regulatory Management,
 - b. Each regulatory requirement will be listed along with its governing regulation, legislation, or other rule-making document,
 - c. This baseline of regulatory requirements, along with their governing agencies, regulations, legislation, or other governing documents will be communicated to the Office of Regulatory Management,
 - d. This review of current regulatory requirements will be completed no later than six months after the enactment of this act,
 - e. This list of regulatory requirements shall serve as a baseline to ensure a zero net increase in total regulatory requirements as outlined in section 3 (A) of this act,
2. To ensure a zero net increase in regulatory requirements, the Office of Regulatory Management will establish and facilitate a process of Regulatory Requirement Replacement which will include the following provisions:
 - a. For each newly proposed regulation after the creation of the regulatory requirement baseline, the entity proposing the new regulation must submit a regulatory requirement replacement request to the Office of Regulatory Management,
 - b. The Regulatory Requirement Replacement request will include the following components:
 - (1) Name of authorizing legislation,
 - (2) Name of authorizing regulation, if applicable,
 - (3) Purpose of the proposed regulation,
 - (4) Number of new regulatory requirements that would be enacted,
 - (5) Proposed regulatory requirements to sunset,
 - (6) Total number of regulatory requirements added if enacted,
 - c. The Office of Regulatory Management will ensure that the total number of regulatory requirements is kept at the same level or reduced before approving the regulatory requirement replacement request,

- 92 d. The Office of Regulatory Management may offer advice on which regulatory
93 requirements to sunset to ensure a zero net increase of total regulatory requirements.
94 e. Only after the approval of the regulatory requirement replacement request by the
95 Office of Regulatory Management may the proposed regulations and their offsetting
96 sunset(s) of existing regulatory requirements be enacted;
- 97 3. The Office of Regulatory Management will facilitate interactions between Agencies and the
98 Red Tape Reduction Commission, which will include the following duties:
99 a. Distributing the biannual reports of the Red Tape Reduction Commission to the
100 appropriate agency,
101 b. Transmitting the questions, answers, or other explanatory documents between
102 government agencies and the Red Tape Reduction Commission,
103 c. Facilitating the communication between members of the Red Tape Reduction
104 Commission and relevant staff of government agencies,
- 105 4. Public Reporting: The Office of Regulatory Management will ensure that the public is
106 informed of all regulatory requirements, regulatory requirement replacement requests, and
107 progress towards the red tape reduction goal [if applicable] and/or the requirement of zero net
108 new regulatory requirements in the following ways:
109 a. The Office of Regulatory Management will build and maintain a website to facilitate
110 its public reporting responsibilities;
111 b. The Office of Regulatory Management will build, maintain, and make available to the
112 public a searchable online database of all current regulatory requirements to include:
113 (1) A list of all current regulatory requirements,
114 (2) The plain language purpose of each regulatory requirement,
115 (3) The responsible Agency for each regulatory requirement,
116 (4) The authorizing legislation and/or regulation for each regulatory requirement,
117 (5) Any changes to the baseline of regulatory requirements since the enactment of
118 this legislation;
119 b. The Office of Regulatory Requirement will post to its website all approved Regulatory
120 Requirement Replacement Requests,
121 c. The Office of Regulatory Management will prepare and post to its website a quarterly
122 report of all approved regulatory requirement replacement requests, changes to the total
123 number of regulatory requirements, and [if applicable] progress towards the goal of red
124 tape reduction as measured against the regulatory requirement baseline outlined in
125 section 4 (B) 1 of this act.
126

127 **Section 5. {Red Tape Reduction Commission}**

128 A. The Red Tape Reduction Commission is hereby established. Its membership will include the
129 following:

- 130 1. The Chief Regulatory Management Officer will serve as Chairman of the Red Tape Reduction
131 Commission,
132 2. The Governor or an individual the Governor designates,
133 3. The Speaker of the House, or an individual the Speaker of the House designates,
134 4. The Senate President (or Lieutenant Governor), or an individual the Senate President (or
135 Lieutenant Governor) designates,
136 5. The Governor will select three volunteer members of the private sector to serve on the Red
137 Tape Reduction Commission,

6. The Speaker of the House will select three volunteer members of the private sector to serve on the Red Tape Reduction Commission,
7. The Senate President (or Lieutenant Governor) will select three volunteer members of the private sector to serve on the Red Tape Reduction Commission.
8. The Chief Regulatory Management Officer will select two volunteer members of the private sector to serve on the Red Tape Reduction Commission.
9. Private Sector volunteer members will have a term lasting two years:

B. Duties

1. The Red Tape Reduction Commission will focus on preparing suggestions concerning which current regulatory requirements meet the following criteria:
 - a. are duplicative or unnecessary,
 - b. are especially burdensome on businesses within the state,
 - c. disproportionately affect businesses with fewer than 50 employees,
 - d. disproportionately affect businesses with annual revenues below \$1,000,000,
 - e. are easily managed by large firms and effectively limit competition by smaller firms,
 - f. could be sunset with minimal impact to public safety;
2. The suggestions of the Red Tape Reduction Commission will be compiled into reports (no fewer than two per year) that will then be transmitted to the relevant agency by the Office of Regulatory Management.
3. Any interaction between members of the Red Tape Reduction Commission and government agencies will be facilitated by the Office of Regulatory Management as outlined in Section 4 (B) 3 of this act.
4. The Red Tape Reduction Commission shall meet as often as necessary to fulfill its duties as outlined in this section;

C. Public Reporting: The Red Tape Reduction Commission will operate openly and transparently in the following ways:

1. The Red Tape Reduction Commission is subject to all open meetings and open records laws pursuant to [insert relevant state code sections here].
2. Members of the Commission (or their designees) will be listed on the website of the Office of Regulatory Management,
3. All meetings of the Red Tape Reduction Commission will be posted on the website of the Office of Regulatory Management at least 48 hours prior to meeting and will be open to the general public,
4. All biannual reports created by the Red Tape Reduction Commission will be posted online in a searchable format on the website of the Office of Regulatory Management.

Section 6. {Emergency Exemption}

A. If the Secretary or other head of a government agency wishes, it may submit an application for new proposed regulations to be exempt from this act by the following process:

1. The responsible agency must complete a regulatory requirement replacement request as outlined in Section 4 (B) 2 of this act,
2. In addition to the standard regulatory requirement replacement request, the agency must also provide an explanation as to why a new proposed regulation should be exempt from this act,
3. The documents outlined in section 6 (A) 1 and 2 must be transmitted to the Office of Regulatory Management and to both houses of the legislature,

4. The Office of Regulatory Management will provide a recommendation to the legislature either supporting or opposing the waiver request from the agency seeking to exempt newly proposed regulation from this act,

B. A two-thirds vote in both houses of the legislature shall be required to grant an agency's request for newly proposed regulations to be exempt from the requirements of this act.

Section 7. {Sunset Clause}

A. Once the Red Tape Reduction Target outlined in Section 3 (E) is met, this act will change from for two old regulatory requirements sunset for every new regulatory requirement enacted, to one old regulatory requirement will be sunset for every new regulatory requirement enacted.

Section 8. {Applicability Clause}

A. If any conflict arises between this article and any other law, this article controls.

Section 9. {Severability Clause}

A. If any provision of this act or its application to any person or circumstance is held invalid that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 10. {Effective Date}

Endnotes

* This model policy was based in part on reforms enacted by the Canadian Province of British Columbia and on research conducted by scholars from the Mercatus Center at George Mason University.

THE WALL STREET JOURNAL.

Breaking Down ‘Bottleneckers’

From music therapists to funeral directors, licensing schemes keep out competition.

By

DICK CARPENTER and **CHIP MELLOR**

Nov. 20, 2016 5:21 p.m. ET

Gov. Bruce Rauner last month established the Illinois Competitiveness Council, which will scrutinize occupational-licensing requirements and other regulations constraining economic growth. In targeting occupational licensing, Mr. Rauner has joined the Obama White House, several other governors, and commissions in states including Michigan, Virginia, Indiana and even regulation-happy California. But despite bipartisan support, licensing reform is likely to face ferocious opposition from members of licensed occupations.

Those working in an industry that requires licensing learn that they can use an occupational license to choke out the competition. They can even command higher prices without delivering improved products or services. In our forthcoming book, we describe those who use government regulations to perpetuate their own advantages in a market as “bottleneckers.”

The word bottleneck comes from the alcohol-distribution industry, which puts its product in bottles and uses a licensing scheme to pursue private advantage without public benefit. Most states require that much of the alcohol produced for consumers pass through a distributor before being made available for retail purchase. There is little evidence that such a middleman scheme reduces overconsumption—the original purported benefit. Yet there is confirmation that consumers pay as much as 30% more for their hooch, all of it going into the pockets of distributors. It’s no wonder that efforts to break open the market are fiercely opposed by distributor bottleneckers.

Representatives of other industries—funeral directors and interior designers, dietitians and nutritionists—have exhibited the same behavior when their licensing schemes have been challenged. They coordinate letter-writing campaigns, crowd legislative-hearing rooms, lobby legislators, hold industry days at capitol, and deliver frightening testimony to legislative committees.

These strategies aren’t new. In 2000 an Oklahoma legislator proposed a bill to allow casket sales without a funeral director’s license. Funeral-home executives warned legislators that the bill would mean that grandma’s dead body would be propped in a corner while awaiting a casket purchased online. (Never mind that such caskets can be delivered within 24 hours.) Oklahoma still requires a funeral-director license to sell a casket, enabling funeral bottleneckers to mark them up several times above cost.

The American Music Therapy Association has been canvassing state legislatures since at least 2011, begging to be licensed. (Music therapists use instruments or singing to help patients' physical and psychological recoveries.) In 2014, Georgia began requiring aspiring music therapists to earn a bachelor's degree or higher in music therapy from an association-approved program, complete 1,200 hours of clinical training, and pass the examination for board certification, which costs \$325 to take. They also have to pay \$100 in fees to the state. These requirements are severe, even though it is unclear that they would provide any benefit for people who want to see a music therapist.

Also consider aspiring cosmetologists, who spend between 1,000 and 2,300 hours in training, depending on the state. But even leaders in the cosmetology industry admit the requirements can't be justified for hair and makeup experts. A 2016 report funded by the Beauty Industry Working Group, a leading cosmetology lobbying organization, acknowledged that "there do not appear to be documented explanations for how each state determines the required curriculum hours," even though there is not much evidence to show more hours "lead to more positive industry outcomes."

The potential existential threat to the license posed by such disparities is not lost on the bottlenecks. In a 2014 letter, the executive director of the Professional Beauty Association warned that "the vast disparity among state licensing requirements will leave [the beauty] industry vulnerable to legislative attacks and the risk of deregulation." As it should.

At the very least, other governors can follow Mr. Rauner's lead and examine how to eliminate the many unnecessary occupational licenses that benefit only the bottlenecks. We look forward to the time when citizens, judges and legislators call out these bad actors and their accomplices when they seek to use government power for their own ends. Let those who fight against them call them what they are: "You're nothing but a bottleneck!"

Mr. Mellor is the chairman of the board at the Institute for Justice, where Mr. Carpenter is the director for strategic research. They are the authors of "Bottlenecks: Gaming the Government for Power and Private Profit," out next month from Encounter.